

BARNES THOMAS COUNTY AUCTIONEERS PURCHASER'S TERMS AND CONDITIONS

1. Interpretation

1.1. In these terms:

- 1.1.1. **Auctioneer:** means Barnes Davison Thomas of 53 Chapel Street, Penzance, Cornwall, TR18 4AF (trading as Barnes Thomas County Auctioneers);
- 1.1.2. **Bidder:** means the person, firm or company who submits bids at the auction;
- 1.1.3. **Conditions of Sale:** means the conditions of sale set out at Schedule 1;
- 1.1.4. **Lot:** means any item which is offered for sale at the auction;
- 1.1.5. **Purchaser:** means the Bidder who submits the highest bid accepted by the Auctioneer or the person who the Auctioneer declares as Purchaser of the Lot;
- 1.1.6. **Purchaser's Premium:** means the premium payable to the Auctioneer which shall be calculated at the rate of 20% of the Purchase Price, exclusive of ARR where applicable
- 1.1.7. **Purchase Price:** means the amount payable by the Purchaser;
- 1.1.8. **Vendor:** means the person who offers the Lot for sale.

1.2. The headings do not affect the interpretation of the Contract. Any reference to a party's employees includes its agents and sub-contractors. Where the context so requires the singular includes the plural and vice versa.

2. Basis of Contract

- 2.1. The Auctioneer sells each Lot as agent for the Vendor (except where the Auctioneer is said to wholly or partly own any Lot as principle in the catalogue).
- 2.2. The contract for sale of the Lot between the Vendor and the Purchaser will be formed at the fall of the Auctioneer's hammer in respect of the Lot.
- 2.3. At the time of the fall of the Auctioneer's hammer in respect of a Lot, a separate contract will be formed between the Auctioneer and Purchaser on these terms (**Contract**).
- 2.4. These terms apply to the Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5. No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding unless agreed in writing and signed by or on behalf of the Auctioneer.

3. Conduct at the Auction

- 3.1. The Bidder agrees to at all times comply with the Conditions of Sale which apply to the sale of the Lot.

4. Description

- 4.1. The Bidder acknowledges that the description of the Lot is provided by the Vendor and agrees that the Auctioneer accepts no liability in respect of the description of the Lot.

5. Risk and Title

- 5.1. Risk in the Lot shall pass to the Purchaser on the fall of the hammer. The Auctioneer recommends that the Purchaser takes out appropriate policies of insurance in respect of the Lot at this stage.
- 5.2. Title to the Lot shall not pass to the Purchaser until the Auctioneer has received payment in full for the Lot and all other sums which are, or become, due from the Purchaser.

6. Payment

- 6.1. The Purchaser agrees to pay the Purchaser's Premium to the Auctioneer in consideration for the auction services provided to the Purchaser.
- 6.2. The Purchaser agrees to pay the Purchase Price and all other sums which are, or become, due from the Purchaser, to the Auctioneer in accordance with terms set out in the Conditions of Sale.

7. Collection

- 7.1. The Purchaser agrees to collect the Lot from the Auctioneer in accordance with the terms set out in the Conditions of Sale.
- 7.2. In the event that the Lot is not collected in accordance with the Conditions of Sale, the Purchaser agrees to pay the storage charge set out in the Conditions of Sale.

8. Forgeries and Infringements

- 8.1. If the Purchaser (acting in good faith) considers the Lots to be forgeries or an infringement of third party intellectual property rights and within 14 days after the date the Contract is formed serves a notice in writing on Auctioneer stating that the Lot is a forgery or infringes third party intellectual property rights and within 21 days after serving such notice:
 - 8.1.1. returns the Lot to the Auctioneer in the same condition as at the date the Contract is formed; and
 - 8.1.2. produces evidence (the burden of proof to be upon the Purchaser) that, in light of the entry in the catalogue, the Lot is a forgery or infringes third party intellectual property rights; and
 - 8.1.3. is able to transfer the title the Purchaser received in respect of the Lot, then, if (in the Auctioneer's sole opinion) the Auctioneer considers the Lot to be a forgery or an infringement of third party intellectual property right, the Contract will be terminated and all sums payable by the Purchaser will be refunded to the Purchaser within a reasonable time.
- 8.2. The Purchaser agrees to be bound by the Auctioneers' decision and when deciding whether or not the Lot is a forgery, the Auctioneer shall be entitled to seek the views of an expert.
- 8.3. The Purchaser agrees to provide the Auctioneer with all reasonable assistance that may be required by the Auctioneer in relation to any third party claim, or notice of any third party claim, that is issued against the Auctioneer.

9. Limitation of liability

- 9.1. Subject to clause 4.1, the following provisions set out the Auctioneer's entire liability (including any liability for the acts or omissions of its employees) to the Purchaser in respect of any breach of the Contract and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.
- 9.2. Nothing in these terms excludes or limits the Auctioneer's liability for death or personal injury caused by the Auctioneer's negligence, fraud or fraudulent misrepresentation or any matter in respect of which it would be unlawful to exclude or restrict liability.
- 9.3. Subject to clause 9.1:
 - 9.3.1. the Auctioneer shall under no circumstances whatever be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 9.3.2. the Auctioneer's total liability to the Purchaser in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Purchaser's Premium.
- 9.4. The Auctioneers accept no responsibility in connection with the commissioning of their staff to bid for any Lots. Bids given by telephone are accepted at Bidder's risk and must be confirmed in Absentee Bid Form.
- 9.5. Every person on the Auctioneers' premises before, during or after the sale shall be deemed to be there at their own risk.
- 9.6. The Purchaser agrees that they:
 - 9.6.1. have inspected the Lot and purchases it with full knowledge of its actual state and condition; and
 - 9.6.2. purchase the Lot solely as a result of his own inspection and on the basis of these Conditions and not in reliance upon any advertisement statement representation or warranty either written or oral or implied made by or on behalf of the Vendor.

10. Artists Resale Rights

- 10.1. If the Artist's Resale Right Regulations 2006 apply to the Lot the Purchaser also agrees to pay to the Auctioneer an amount equal to the resale royalty provided for in those Regulations and the Auctioneer undertakes to the Purchaser to pay such amount to the artist's collection agent.

11. Miscellaneous Provisions

- 11.1. Clauses 11, 12, 13, 15, 16, 17 and 18 of the Conditions of Sale shall apply to this Contract.

12. Entire Agreement

- 12.1. The Contract constitutes the whole agreement between the Auctioneer and Purchaser and supersedes all previous agreements between the Auctioneer and Purchaser relating to its subject matter.
- 12.2. The Auctioneer and Purchaser acknowledges that, in entering into the Contract, they have not relied on, and shall have no right or remedy (other than for breach of contract) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in these terms.